case. (See *Mohd Azam* v *Mohd Iqbal*[3] with the corresponding section in the Pakistan Criminal Procedure Code.)

In this regard the court is bound to admit fresh evidence when it appears essential to a just decision of a case. As the powers under this section are very wide it is therefore necessary that great care be taken when exercising such discretion. However, the second limb of this section being an imperative provision the court must give serious consideration to exercising such powers if in so doing a just and proper decision could be arrived at.

It is for these reasons that we made the order that we did.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Soon Teck Finance (M) Bhd v Public Finance Bhd

HIGH COURT (PENANG) – CIVIL SUIT NO 517 OF 1978
MOHAMED DZAIDDIN J
14 MARCH 1988

Hire Purchase – Better title to repossessed car – Dispute by two finance companies – Original vehicle registration number and 'ownership claimed' indorsement changed on vehicle registration card – Defendant prima facie legal owner on the face of vehicle registration card – Onus on plaintiff to show that defendant's title was acquired illegally

The plaintiff entered into a hire-purchase agreement with C for the hiring of a vehicle bearing registration no AV 3366. The vehicle was then registered with the Registrar and Inspector of Motor Vehicles, Penang in the name of C but with the 'ownership claimed' by the plaintiff. C never paid the instalments due and the plaintiff terminated the agreement. In the course of repossession inquiries, the plaintiff discovered that the registration no AV 3366 had been changed to PY 4598 and the indorsement of 'ownership claimed' had been cancelled and replaced by the defendant company. The plaintiff sought, inter alia, a declaration that the vehicle is the property of the plaintiff. During the trial, the defendant called three witnesses to testify that the hire-purchase transactions in respect of vehicle registration no PY 4598 was proper and legal and in accordance with normal business transactions. It is common ground that the only issue in this case was who has a better title to the vehicle.

Held, dismissing the plaintiff's claim:

(1) On the face of all available documents, in particular the vehicle registration card, the defendant is prima facie the legal owner as he is the registered owner under the 'ownership claimed' of the vehicle bearing registration no PY4598.

(2) Since the plaintiff is disputing the defendant's title to the vehicle, the onus is on the plaintiff to show that the defendant had acquired the title of the vehicle illegally or without proper inquiry or that he was not a purchaser in good faith.

(3) The plaintiff had failed to adduce any evidence to show that he has a better title to the vehicle. The defendant company was a purchaser in good faith of the vehicle without notice of any defect in the seller's title. The defendant had also made adequate inquiries in the ordinary course of business to determine that the vehicle was free from any defect as to its title.

Legislation referred to
Hire Purchase Act 1967

Chin Fook Yen for the plaintiff.
Choy Kam Lee for the defendant.

Cur Adv Vult

Mohamed Dzaiddin J: The plaintiff is a finance company having its registered office at No 43-53, 3rd floor, Penang Road, Penang and carrying on business in the financing of the purchase of motor vehicles under hire-purchase agreements. On 24 September 1977, the plaintiff entered into a hire-purchase agreement with one Chong Chan Fatt of No 98, Jalan Besi, Island Park, Penang ('the hirer') for the hiring of one Mercedes Benz, 240D diesel saloon car bearing chassis no 115117-60-086904; engine no 616916-20-068283 and registration no AV 3366 ('the said vehicle') for a total sum of $33,000 payable by a deposit of $12,000 and the balance by 24 hire rentals. The said vehicle was registered with the Registrar and Inspector of Motor Vehicles, Penang on 24 September 1977 in the name of the hirer, but with the 'ownership claimed' by the plaintiff.

Unfortunately, the hirer never paid the instalments due and in compliance with the terms of the hire-purchase agreement (P1) and the Hire Purchase Act 1967, the plaintiff terminated the said agreement and became entitled to immediate possession of the said vehicle. However, it was only on 6 January 1978 that the plaintiff succeeded in repossessing the said vehicle from Kwong Soon Cheong Co Sdn Bhd, 43, Market Street, Ipoh ('the said B company'). In the course of the inquiries, the plaintiff discovered that the registration no AV 3366 had been changed to PY 4598 and the indorsement of 'ownership claimed' had been cancelled and replaced by 'hak milik di-tuntut oleh Public Finance Bhd' dated 5 December 1977 (AB1 p 8). Therefore, by this writ of summons, the plaintiff has asked this court for a declaration that the said vehicle is the property of the plaintiff and for damages and consequential orders and costs. It is common ground that the only issue in this case is: who has a better title to the said vehicle?

On the face of all available documents before me, in particular the vehicle registration card, AB1, the defendant being the registered owner under the 'ownership

claimed' of the said vehicle bearing registration no PY 4598 prima facie becomes the legal owner and therefore has a better title. However, since the plaintiff is disputing the defendant's title to the said vehicle, in my opinion, the onus is on the plaintiff to show that the defendant had acquired title of the said vehicle illegally or without proper inquiry or that he was not a purchaser in good faith.

Mr Lim Chee Sin (PW1) was the main witness for the plaintiff. At the material time, he was the plaintiff's branch manager, and was personally in charge of the hiring of the said vehicle to the hirer upon the execution of P1. He was also responsible for lodging the necessary RIMV forms including producing the vehicle registration book for indorsing the 'ownership claimed' at the RIMV office in Penang. Next, he testified that after he discovered that the hirer did not pay any instalment, he issued the fourth schedule notice, AB8, and notice to repossess, AB9, dated 25 November 1977. However, it was about this period that the plaintiff must have suspected that both the hirer and the vehicle were missing. According to PW1, he personally made inquiries and discovered that the registration numbers had been changed and indorsement of the 'ownership claimed' cancelled. After tracing the whereabouts of the said vehicle, PW1 went to Ipoh on 6 January 1978 to repossess it from the said company.

Encik Mohd Jamil bin Haji Mohd Noor (PW2), the Assistant Director, RIMV, Ipoh, testified that his office did not have the files for vehicles no AV 3366 and PY 4598 as both were missing.

The defendant called three witnesses to testify that the hire-purchase transactions in respect of vehicle registration no PY 4598 were proper and legal and in accordance with normal business transactions. According to Mr Kuan Kok Leong (DW2), Managing Director of Intan Credit Sdn Bhd, on 5 December 1977 he introduced Kwong Soon Cheong Sdn Bhd to the defendant company in order to obtain hire-purchase finance for vehicle PY 4598. He conducted a search at the office of RIMV in Ipoh for vehicle PY 4598. He checked the registration card and compared with RIMV records and found it to be in order. He ascertained that one Au Kam Fong was the registered owner who wanted to sell the said vehicle to Kwong Soon Cheong Sdn Bhd.

At the material time, Mr Foo Seh Loon (DW3) was the branch manager of the defendant company. He was the officer who signed the relevant documents on behalf of the defendant. He stated that before the defendant released the purchase sum of the said vehicle to Intan Credit Sdn Bhd, he had ascertained the particulars of the said vehicle, that there was no previous 'ownership claimed' being indorsed on the vehicle registration card. He also relied on the dealer, Intan Credit Sdn Bhd and according to DW3 the defendant would not conclude the hire-purchase transaction had he known that the said vehicle was subject to any 'ownership claimed' by a third party.

In evaluating the evidence of PW1 for the plaintiff, I find the witness merely traced the various movements of the said vehicle until its repossession on 6 January 1978. On the basis of his evidence, I also find the plaintiff had failed to adduce any evidence to show that he has a better title to the said vehicle. On the other hand, based on the evidence adduced by DW2 and DW3, I am satisfied that the defendant company was a purchaser in good faith of the said vehicle from Au Kam Fong and that upon the advice of DW2 the defendant had accepted the purchase and granted hire-purchase finance to Kwong Soon Cheong Co Sdn Bhd without notice of any defect in the seller's title to the said vehicle. I am also satisfied that the defendant had made adequate enquiries in the ordinary course of business to determine that the said vehicle was free from any defect as to its title.

Mr Chin, counsel for the plaintiff, in his submission conceded that the defendant was an innocent party and counsel's complaint was that the defendant company through its agent, Intan Credit Sdn Bhd, should have been suspicious and put on guard when within a span of three months, there were three transfers made or registered on the vehicle registration card.

In my judgment, on a balance of probability, I find the plaintiff has failed to prove his case and this action is dismissed with costs.

Order accordingly.

Solicitors: *Chin Fook Yen & Co; KC Lai & Co.*

Reported by *Ng Sheau Jiuan*

Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang

HIGH COURT (KUALA LUMPUR) – ORIGINATING MOTION NO A4 OF 1985
HARUN J
19 AUGUST 1988

Local Government – Rating – Annual value – Construction cost and age of building – Rates on percentage basis – Local Government Act 1976, s 145

The appellants were owners of lands on which they operated two petrol pumps and service stations in Klang. By separate notices dated 19 November 1983, the municipality informed them that the annual value of those two properties had been revised to $42,000 each from the 1976 assessment of $20,000 and $22,000 respectively effective from 1984. The appellants' objection under s 42 of the Local Government Act 1976 was turned down.